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No. 84-1432

In The
# Supreme Court of the United States
October Term, 1984

WILLIAM J. MARTIN,
*Petitioner,*

v.

DIGHT W. CRAIN, PETER H. GARLAND, J. VINCENT SAUNDERS, MARSHALL LEBOWITZ, MARK H. RAIDER, PAUL AMBLER, and PAMELA J. KAUFMAN, as they are members of the NATICK SCHOOL COMMITTEE and JOSEPH A. KEEFE, SUPERINTENDENT OF SCHOOLS OF THE TOWN OF NATICK,
*Respondents.*

**ON PETITON FOR A WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT OF THE COMMONWEALTH OF MASSACHUSETTS**

## RESPONDENTS' BRIEF IN OPPOSITION

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## QUESTIONS PRESENTED

1. Whether the Supreme Judicial Court of the Commonwealth of Massachusetts correctly upheld as constitutional a state statute authorizing the suspension, without a hearing, of a public school teacher for five days or less for any reason which the appropriate school official deems adequate.

2. Whether the Supreme Judicial Court of the Commonwealth of Massachusetts correctly determined that petitioner's five day suspension should be upheld without reaching the facial constitutionality of the statute where the teacher and his attorney twice met with the school superintendent prior to the five day suspension and the teacher received a full evidentiary hearing promptly after the five day suspension.

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## STATEMENT OF THE CASE

Respondents submit that the opinions of the Supreme Judicial Court (Pet. A. 3a-5a)[1] and the trial court (Pet. A. 10a-13a) contain accurate statements of the facts and proceedings necessary for consideration of the petition for a writ of certiorari.

Respondents do correct the misimpression potentially caused by petitioner's statement that during the presuspension meetings between petitioner, his counsel, and the school superintendent, no charges were advanced against petitioner regarding his performance as a teacher (Pet. at 3). The record reflects the following chronology of petitioner's presuspension notice and opportunity to respond. Petitioner had received increasingly poor evaluations since his return to teaching in 1977 from an extended leave of absence taken because of personal difficulties (Resp. A. 1-2). Concerns about petitioner's teaching competence and his handling of students were the subject of numerous meetings between petitioner and the school principal or superintendent. Petitioner received numerous written notices cataloguing his profound deficiencies as a teacher during the months preceding his suspension.[2] On January 14, 1980, a committee of parents demanded to speak with the superintendent, at which time

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[1]References to the appendix to the petition for a writ of certiorari appear as "Pet. A.". References to the appendix to respondents' brief in opposition appear as "Resp. A.".

[2]Various exhibits from the suspension hearing appear at Resp. A. 3-15. These memoranda reflect the ample notice and opportunity to respond provided petitioner. Each is either addressed to petitioner or signed by him, reflecting a discussion of the contents with his supervisor.

the parents' many concerns with petitioner's handling of their children's class were discussed (Resp. A. 16-17).[3] On January 18, 1980,[4] the superintendent met with petitioner and petitioner's attorney, informing them of the superintendent's opinion that conditions in petitioner's classroom had reached an intolerable level (Resp. A. 17). On January 21, 1980, the superintendent met again with petitioner and petitioner's attorney, again informing them that the classroom situation was intolerable (Resp. A. 18). The superintendent, at the January 21 meeting, told petitioner that he was being suspended for the five day period of January 21-25, 1980 (Pet. A. 4a).

On January 29, 1980, petitioner received a full evidentiary hearing before the school committee on the following matters: (a) petitioner's deliberate low grading of students as a motivating tool; (b) petitioner's inefficiency in teaching; and (c) petitioner's incapacity as a teacher (Pet. A. 5a, 11a-13a).[5]

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[3]Respondents' appendix contains excerpted sworn testimony of Superintendent Keefe at the suspension hearing.

[4]The superintendent, at the suspension hearing, placed this meeting on January 16, 1980. Whether this meeting occurred on January 16 or 18 is of no consequence.

[5]The dispute in the record whether this hearing was expressly related to the five day suspension or was limited to substantiating the "unbecoming conduct or other good cause" required for imposition of the subsequent thirty day suspension was decided against petitioner. The Supreme Judicial Court found that this hearing was an effective postsuspension hearing on the five day suspension (Pet. A. 6a). Telling on this point and supportive of the state court's finding on this factual issue is petitioner's affidavit, which states:

*(Continued on next page)*

## REASONS WHY THE WRIT SHOULD BE DENIED

### I. The Determination By The Supreme Judicial Court That Under State Law No Property Interest Was Affected By The Five Day Suspension Is Dispositive Of Petitioner's Constitutional Claims.

The petition wrongly assumes that a property interest was affected by the five day suspension. Petitioner argues from that assumption the constitutional process he believes is due. His argument however, begs the critical question decided against him by the Supreme Judicial Court's holding that, "[N]o property interest was implicated" (Pet. A. 6a) and that petitioner "had no statutory right or legitimate claim of entitlement to continued employment which made him immune from the type of short term suspension described in § 42D." (Pet. A. 7a). Because the legislature authorized such suspensions for any reason deemed adequate by the superintendent, no property interest, under state law, is implicated. Because there was no deprivation of a property interest, constitutional due process considerations do not come into play. *Cleveland Board of Education v. Loudermill*, — U.S. —, 53 U.S. L.W. 4306, 4307 (U.S. March 19, 1985);[6] *Board of Regents*

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*(Continued from previous page)*

> On January 24, 1980, I was notified in writing that the reason I had been suspended for five (5) days by [the superintendent] was due to my grading procedure, alleged inefficiency and incapacity as a teacher. (Resp. A. 19).

The Supreme Court found nothing contrary in the record "to indicate that the reasons [for the five day and thirty day suspension] were . . . different." (Pet. A. 6a).

[6]This Court's recent decision in *Cleveland Board of Education v. Loudermill*, — U.S. —, 53 U.S.L.W. 4306 (U.S. March 19, 1985) explains, by contrast, the error in petitioner's conten-

*(Continued on next page)*

*v. Roth*, 408 U.S. 564, 576-578 (1972). The decision of Massachusetts' highest court on the construction of state law should not be disturbed. *Fox Film Corp. v. Muller*, 296 U.S. 207, 210 (1935); *Berea College v. Kentucky*, 211 U.S. 45, 53-54 (1908).

Property interests are not created by the Constitution, but are created and defined by an independent source such as state law. *Board of Regents v. Roth*, 408 U.S. at 577. This Court has consistently held that no constitutional due process issues arise when no property interest under state law is involved. *E.g., Bishop v. Wood*, 426 U.S. 341, 347 (1976); *Arnett v. Kennedy*, 416 U.S. 134, 178 (1974) (White, J.). The state court determination that this case involves "no legitimate claim of entitlement" disposes of, without reaching, petitioner's due process claims.

The construction of state law is left to the state courts. This Court's "only power over state judgments is to correct them to the extent that they incorrectly adjudge federal rights." *Zacchini v. Scripps-Howard Broadcasting Co.*, 433 U.S. 562, 566 (1977); *see also; Herb v.*

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*(Continued from previous page)*

tions here. The Ohio termination statute at issue in *Loudermill* provided a specific, objective list of wrongs upon which termination could be based. *Id.* at 4307 n.4. The five day suspension statute at issue here provides for an extremely brief suspension for any reason deemed adequate by the superintendent. See *infra*, pp. 9-10. While the issue in *Loudermill* was what process is due to protect the employee's conceded property interest against termination of employment, the issue in this case is whether a property interest is involved at all by this brief suspension imposed on a subjective, discretionary basis.

*Pitcairn,* 324 U.S. 117, 125-126 (1945). The sufficiency of petitioner's claim that he had a legitimate expectation to employment undisturbed by a five day suspension for reasons deemed adequate by the superintendent must be decided by reference to state law and where, under state law, such brief suspensions may be imposed at the will and pleasure of the employer, no constitutional process is due. *Meachum v. Fano,* 427 U.S. 215, 228-229 (1976).

The decision of the Supreme Judicial Court that no property interest was divested by the five day suspension is fully supported by the language of the statutory scheme with respect to a teacher such as petitioner. Petitioner was subject to a suspension of not more than five days for unbecoming conduct or for *any other cause which the superintendent deemed adequate.* Mass. Gen. Laws Ann. ch. 71 § 42D (West 1982) (Pet. A. 32a). Because such a brief suspension may be imposed for any reason the superintendent subjectively deems adequate, the statute was properly construed by the state court as authorizing brief "at will" suspensions (Pet. A. 6a n.4). The correctness of the court's ruling is apparent upon comparison of the standard in the five day suspension statute with the legislative standards for longer suspensions and terminations. A teacher may be suspended for up to thirty days only for "unbecoming conduct or other good cause." Mass. Gen. Laws Ann. ch. 71 § 42D (West 1982). (Pet. A. 31a). A tenured teacher may be terminated only for "inefficiency, incapacity, conduct unbecoming a teacher . . ., insubordination or other good cause." Mass. Gen. Laws Ann. ch. 71 § 42 (West 1982 (Pet. A. 29a). The above comparison manifests the legislative intent which was given effect by the Supreme Judicial Court. Terminations or suspensions in excess

of five days are subject to objectively defined standards of conduct; decisions pursuant to those standards can be objectively and meaningfully reviewed. In contrast, a five day suspension may be imposed based on subjective, discretionary reasons deemed adequate by the superintendent; in this situation, no purpose would be served by third-party review. *Connecticut Board of Pardons v. Dumschat*, 452 U.S. 458, 467 (1981) (White, J.).

The Supreme Judicial Court correctly construed the legislative intent of Mass. Gen. Laws Ann. ch. 71 § 42D. A public school teacher has no legitimate expectation against being suspended for five days or less for reasons "deemed adequate" by the superintendent. This reasonable construction of state law, by the highest court of the state, should not be disturbed. This state law issue does not properly invoke the certiorari jurisdiction of this Court.

## II. The Court Should Not Hear A Claim Of Entitlement To A Presuspension Hearing, Raised For The First Time In The Petition For Certiorari.

Petitioner's complaint contained no constitutional allegations concerning his five day suspension (Resp. A. 20-24). The trial court raised a constitutional issue concerning the five day suspension *sua sponte*, limiting its constitutional inquiry to the supposed absence of a postsuspension hearing (Pet. A. 22a).

On appeal, petitioner adopted the position raised *sua sponte* by the trial court, challenging the five day suspension solely on the basis of a claimed denial of a post-

suspension hearing.[7] Prior to the filing of his petition for certiorari, Martin never claimed that a presuspension hearing was required. The Supreme Judicial Court, deciding only those issues presented and argued, correctly found that petitioner received the only hearing he claimed was due—a full and effective postsuspension hearing. Having lost, on a facual basis, the only constitutional violation he argued below, petitioner and his most recent attorneys[8] produces in this Court a new theory, raising for the first time the extent of presuspension procedures provided him.

The petition violates the fundamental rule that this Court "cannot decide issues raised for the first time here." *Tacon v. Arizona*, 410 U.S. 351, 352 (1973). This bar is jurisdictional, not discretionary. *Food Employees Union v. Logan Valley Plaza*, 391 U.S. 308, 334 (1968) (Harlan, J. dissent). The state court was neither asked to decide nor decided the claim raised in the petition.[9] When "the highest state court has failed to pass upon a federal ques-

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[7]The issue framed by Martin in the Supreme Judicial Court refers only to a postsuspension hearing. Additionally, Martin's brief in the Supreme Judicial Court concludes: "Hence, the suspension of Mr. Martin for five days without a postsuspension hearing was an unconstitutional deprivation of a property interest without due process of law."

[8]Petitioner has been represented by different counsel at every stage of these proceedings; the presuspension conferences, the postsuspension hearing, the Supreme Judicial Court and in this Court.

[9]Of course, the Supreme Judicial Court holding that the five day suspension does not implicate a property interest supports, *a priori*, the position that no presuspension hearing is required. See pp. 6-10, *supra*. Assuming *arguendo*, however, the implication of a property interest, petitioner's failure to raise presuspension hearing issues below is fatal to his petition.

tion, it will be assumed that the omission was due to want of proper presentation in the state courts, unless the aggrieved party in this Court can affirmatively show the contrary." *Street v. New York*, 394 U.S. 576, 582 (1969).

Having made no claim below of the type pressed here, petitioner is not properly before this Court.

### III. The Court Should Not Review Whether, As A Matter Of Fact, Petitioner Received An Effective Postsuspension Hearing.

The Supreme Judicial Court held:

> Questions implicating the adequacy of reasons and the need for disclosure of those reasons under [the second paragraph] of § 42D must await another day, because, in the instant case, Martin was given a hearing [four days] after his five day suspension (Pet. A. 6a.)

Petitioner received a prompt and full evidentiary hearing, at which he was represented by counsel who cross-examined witnesses and had the opportunity to present whatever contrary evidence petitioner wanted the school committee to consider. This hearing fully supports the Supreme Judicial Court's alternative grounds for upholding the five day suspension. Martin argues that the Supreme Judicial Court "misreads the record" with respect to this hearing (Pet. at 11). Petitioner asks this Court to decide whether the facts adequately support the state court holding that he in fact received an effective postsuspension hearing.

Martin's claim of "misreading the record" is no more than a claim of factual error. Such claims are not and should not be reviewed by this Court. "We do not grant a certiorari to review evidence and discuss specific facts."

*United States v. Johnston*, 268 U.S. 220, 227 (1925). *Fry Roofing Co. v. Wood*, 344 U.S. 157, 160 (1952). The finding of the Supreme Judicial Court that petitioner received a postsuspension hearing is inappropriate for review and is dispositive of the case. Petitioner offers no justification for his attempt to involve this Court in a review of facts decided against him below.

## CONCLUSION

For these reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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April, 1985

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## APPENDIX

COMMONWEALTH OF MASSACHUSETTS
SUPERIOR COURT DEPARTMENT

CIVIL ACTION NO. 80-3785

MIDDLESEX, SS.

WILLIAM J. MARTIN,
Plaintiff,

v.

JOSEPH A. KEEFE, et al.,
Defendants.

AFFIDAVIT OF JOSEPH A. KEEFE

I, Joseph A. Keefe depose and say the following:

1. I am currently the Superintendent of Schools in Natick and have been employed in that position since January 1, 1977. I hold Masters and Doctorate degrees in Education from Boston University. I have worked in the field of education since 1954 and have held administrative positions since 1959. I make this affidavit of my own personal knowledge.

• • •

8. In the school years 1977-78, 1978-79 and 1979-80 the principals of each elementary school completed evaluation forms for each teacher based on their classroom observations. The evaluations for 1977-78 were in the form of narrative reports and the evaluations for the subsequent two years used a performance rating scale. After the evaluations were completed, they were submitted for review to Mr. Francis Corcoran, Assistant Superintendent for Personnel.

9. Mr. Corcoran and I have read and reviewed Mr. Martin's 1977-78, 1978-79 and 1979-80 evaluations, as well as 150 evaluations of other tenured teachers during that time period. During the 1978-79 school year each teacher was evaluated on a scale ranging from unsatisfactory to outstanding. Of the approximately 150 evaluations of tenured teachers only 3 received ratings of "fair" (next to the lowest category) and none received overall evaluations of unsatisfactory. Mr. Martin was rated fair in March 1979. In 1979-80 the same scale was utilized. One teacher was rated unsatisfactory, none were rated fair, five were rated good, 75 were rated very good, and 43 were rated outstanding. In March 1980, Mr. Martin's performance was judged to be unsatisfactory.

• • •

SIGNED UNDER THE PENALTIES OF PERJURY THIS —— DAY OF OCTOBER, 1982.

_____

Joseph A. Keefe

EXHIBIT NO. 4

November 19, 1979

Re: Bill Martin

Bill Martin and I have met several times. During these meetings the following concerns were expressed:

1. Overall lack of classroom control and discipline.

2. On October 25, Mr. [.....]* met with me to share some of his concerns that he had about his son [.....], a student in Bills' class. Mr. [.....] indicated that [.....] did not want to go to school; that he was bored and not challenged or motivated. I shared these concerns with Bill the following day.

3. Ofter October 25 several observations in Bill's classroom were made after which I met with Bill and indicated to him that possibly the lack of classroom control and discipline was due to his not being organized or adequately prepared.

4. On November 7 a student from Bill's classroom was placed in Nancy Hurwitz's classroom by me because of behavior difficulties.

5. Nancy Hurwitz was informed that this particular student's classroom planning and preparation was Bill's responsibility. I told Bill that moving this student from his classroom was only temporary and that Bill was still responsible for planning and monitoring the student's progress. It was suggested that he would have to individualize for this student the same as he would ordinarily have to do for any student in his class that might require such preparation.

*[.....] material was omitted from the original.

Suggestions:

1. [.....]
2. Make sure work given is appropriate for the class as a whole, for small groups, and for individual students.
3. Participate actively in the lesson and activity whenever possible.
4. Try to have lesson move smoothly.
5. Include ready-made supportive materials in your plans.
6. Group and challenge exceptional students (related to #2 above).
7. Know the materials well before you teach each lesson.
8. Use a variety of instructional methods.
9. Establish activity and learning centers in the room.
10. Use appropriate control techniques for each particular student.

/s/ I feel I deal with *everyone* in a positive way, the best I am able.

Wm. J. Martin

EXHIBIT NO. 5

November 20, 1979

Re: Bill Martin

Bill Martin and I met on November 19. During this meeting the following concerns were expressed:

We discussed his lesson plans which he was asked to bring with him. The lesson plans at that time were found to be very inadequate. The explicit reasons for the lessons being inadequate were; they were not well-organized, no provisions were made for exceptional students, no provisions were made for different groups, there was no evidence within the instructional organization of any grouping strategies.

Also expressed at this meeting was concern of meeting the needs of the class as a whole, and of individuals in particular.

Several suggestions were made at this point that might help in maintaining classroom control and improve the learning atmosphere in the classroom. The suggestions are as follows:

1. Develop well-organized lesson plans; these plans should provide for whole class instruction, small group instruction, and for individuals that might require such preparation.
2. Know the materials to be covered in each lesson well before you begin your teaching. This may mean taking the material home with you to study and to prepare yourself for each lesson.
3. Develop activity learning centers that are interesting and challenging for the class.

4. Develop teacher-made supportive materials for your lessons.
5. Develop effective and efficient evaluating procedures to determine student growth.

/s/ Wm. J. Martin

EXHIBIT No. 8

December 4, 1979

Re: Bill Martin

The follow are notes from a classroom observation on December 4 in Mr. Martin's fourth grade from 8:45 to 9:35 a.m.:

1. At 8:45 the class was asked to move to their two math groups.

2. The math assignments for groups 1 and 2 were on the board.

3. Group 1 was working on a multiplication worksheet, and the teacher was working with group 2 correcting math examples from the textbook page 164.

   The teacher asked different students to read a problem and give the answer. This continued for most of the math period. He did occasionally, after completing a page, go around and give individual attention to some students.

4. At 9:10 Mr. Martin passed out math paper to group 1 to be used for pages 174-175 in their textbook.

5. Mr. Martin then continued to work with group 2. (Immediately after passing out the math paper to group 1, still 9:10.)

6. At 9:24 Mr. Martin stopped working with group 2 and then asked group 1 to turn to page 174. Then the following minute the teacher went back to work with group 2 and stayed with them until 9:35.

7. At 9:35 he told the students to put their math away because they went over their math period 5 minutes; and he asked the children to stand,

and they did some relaxing exercises for a few minutes at which time I left.

At no point during that period of observation did I see a lesson being taught by the teacher. The entire time seemed to be devoted to correcting homework assignments of group 2 and helping group 2 begin the next night's assignment. During this time group 1 basically was on their own.

For this particular math lesson, there appeared to be a lack of organization and preparation on the part of the teacher.

/s/ Wm. J. Martin

EXHIBIT NO. 11

December 13, 1979

Re: Bill Martin

On December 13, Mr. Martin and I met with Mr. Corcoran in his office. At that time Mr. Martin was given a paper containing information and suggestions based on a classroom observation made by Mr. Corcoran and myself on December 12.

The entire meeting focused on two areas. One area dealt with the problems and concerns relating to Bill's teaching, and the other area dealt with suggestions that might help Bill make improvements in his teaching.

Based on many observations in Bill's classroom, and after discussing these with him, Bill has yet to make, or to have, a thorough assessment of each student's abilities. Not having this essential information makes adequate planning very difficult and very often inappropriate for many of his students. In addition, the planning that is done lacks the basic essentials necessary in good lesson planning; namely: establishing specific goals to be achieved by the students, establishing the motivation techniques to be used for that particular lesson, developing a procedure to be followed in helping the students reach the specific goals, and establishing an evaluation process.

Suggestions were made to the effect that Bill make an educational assessment of each student so that he may adequately and appropriately plan to meet the needs of his class. In addition, a lesson form was given to Bill to assist him in his planning and organization.

Bill did indicate that, in his opinion, he was doing a good job and that he was doing the best he could with what he has.

/s/ Wm. J. Martin

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EXHIBIT NO. 12

To: Bill Martin
From: A. John Crisafulli
Date: December 18, 1979

Several suggestions have been made in the past several weeks to assist you in resolving some concerns and problems that has arisen. Areas of concern and recommendations are as follows:

1. Complete thorough student assessments.
2. Lesson plans to date are incomplete—complete lesson plans.
3. Individualize student instruction.
4. Improve teaching strategies.
5. Improve communications with students and parents.

To further assist you in a supervisory manner, I would like to give you the following assignment:

A. In order to meet the educational needs of the class, I would like to have in my office, on or before January 2, a complete and thorough assessment of each student's abilities. Please use the attached form.

B. I would also like to have in my office by January 10, completed lesson plans for the next full week, using the lesson form that I gave to you on December 17, in the three major areas—math, reading, and language arts.

/s/ Wm. J. Martin

EXHIBIT NO. 15

January 3, 1980

Bill Martin
East School
Oak Street
Natick, Mass. 01760

Dear Bill:

I acknowledge your letter dated December 28 with reference to the individual assessments.

Please note that a teacher's marking procedure must be consistent with our school system grading policy. I am concerned with the statement: "I deliberately marked lower in order to motivate this class to work harder." Motivation should come from your varied instructional approaches which follow appropriate planning. Student interest is also developed by a challenging curriculum which should be presented. Deliberately marking a student lower than his level of performance is not acceptable.

Yours truly,

A. John Crisafulli
Principal

EXHIBIT NO. 17

Date 1/30/80

To: Bill Martin

From: A. John Crisafulli

Date: January 10, 1980

On January 9, Mrs. [.....], Mrs. [.....], Mrs. [.....] and Mrs. [.....] met with me to discuss concerns they have relative to the educational program their children are experiencing in your classroom. Three of the parents mentioned have expressed these concerns to me before, and I have shared them with you. These parents informed me that they were speaking for several other parents as well, and that an appointment with Dr. Keefe has been made for Monday, January 14, in order to discuss with him these concerns.

The parents' concerns at this time are as follows:

1. Work is not designed to challenge students at their ability levels.
2. There seems to be a lack of discipline within the classroom.
3. Not very many papers are going home; in those that do, the teacher's correction marks are not understood or helpful.
4. There is a lack of understanding of the teacher's grading system.
5. Children are unhappy.
6. There seems to be a lack of motivation.

I would like to bring to your attention the fact that these concerns have been shared with you in both written and verbal communication many times previously. Based

on several past observations in your classroom, I have shared with you many similar concerns.

In the past, several suggestions have been made that would correct or improve the above problem areas. If these suggestions were properly carried out, these concerns would probably no longer be with us.

Because these concerns are still a point of issue with the parents, and also with me, it might be helpful for you to review these suggestions in such a way that you might reorganize your preparation to better meet the needs of your class.

1. To make a complete and thorough student assessment. (You have done this as of January 1, 1980.

2. Group class according to levels of ability based on your January 2 assessments in math, reading and language arts areas.

3. Prepare and organize lessons to meet the educational needs of the above ability groups.

4. Participate actively in the lesson and activity.

5. Provide appropriate materials for exceptional students in your class.

6. Use a variety of instructional methods.

7. Develop teacher-made supportive materials for your lessons.

8. Develop effective and efficient evaluating procedures to determine student growth.

9. Effectively communicate the above student growth to parents.
10. To improve parent communication and understanding you might invite parents in to visit your classroom while in operation.
11. You might provide a folder for each child to carry home regularly so that parents would have an opportunity to be involved in checking the papers on an almost daily basis.

• • •

Q. Can you tell us what was said?

A. I thought that in a sense of order it might be appropriate if the parents were to speak in turn relative to any concerns that they had, which was the procedure that was followed. I would say that a summary of these concerns contained the following elements: (a) The parents' concern for the climate of the classroom; (b) parents' concern for the apparent lack of progress of their children in that classroom; (c) the parents' concern for what they saw as a lack of challenge to the students in that classroom; (d) the parents' concern with what they saw as an inability on the part of the teacher to communicate to them on those occasions when they had sought his advice and counsel in what we term "parent-teacher conferences" and (e) the parents' concern that there was a lack of consistency, if I may use those terms, regarding the grading system that the teacher was using.

Q. Maybe you could elaborate on that last one for a moment.

MR. WRIGHT: Objection.

A. I can cite two instances that arise in my mind. In one case the parents' concern had to do with the fact that after the parent had been to see the teacher to express some concern about what the grades meant in relationship to what was on the paper, that subsequently the parent alleged that the grades seemed to go up. In a second instance the parent showed me a paper that had been done by a child, completed rather by a child, and the parent felt that the grade on the paper had no relationship, whatsoever, to the quality of the work that appeared on it.

Q. You say the meeting lasted approximately an hour?

A. Yes, sir.

Q. What if any conclusion did you subsequently reach relative to the continued presence of Mr. Martin in his classroom?

A. Following the meeting with the parents I sat down with Mr. Corcoran, who had also participated in this particular event, and we reviewed all of the information which we had relative to Mr. Martin's performance in the classroom. Based upon my judgment as a professional educator I concluded that an *intolerable situation* existed in the fourth grade classroom in the East Natick School taught by Mr. William Martin, and that as Superintendent of Schools and the individual responsible, as the Chief Executive Officer, I had to take an action that would remove Mr. Martin from the classroom immediately.

• • •

Q. But you are saying, and under oath, sir, that you did tell Mr. Keough that there were complaints by teachers that were made to you on the 14th of January?

MR. AXTEN: By teachers?

MR. WRIGHT: I am sorry, by parents.

A. I indicated to Mr. Martin and Mr. Keough, who was present as Mr. Martin's attorney, that in my opinion conditions in the fourth grade classroom at the East Natick School, which up to that point in time was under the direction of Mr. Martin, had reached an intolerable level.

• • •

Q. Now, on January 21 there was another meeting in your office; is that true?

A. That is correct.

Q. Who was present at that time?

A. Mr. Martin and yourself, sir, in lieu of Mr. Keough, who, you alerted us, was unfortunately in the hospital.

Q. Where was that meeting held?

A. My office.

Q. What was discussed during that meeting, sir?

A. Well, if memory serves me, I believe you requested that I review the several options with you, which I believe I did, and I cannot recreate the entire conversation. I think you made the statement to the effect that Mr. Martin would not resign.

Q. Was there any discussion, sir, of any misconduct on the part of the employee at that meeting?

A. I indicated to both of you that in my opinion an intolerable situation had arisen in the fourth grade class at East Natick School.

Q. It is your testimony that you said that, sir, to me?

A. It is my belief I made a statement very similar to that, and I believe that at least on two occasions I used the term "intolerable," once in the presence of Mr. Keough, which was on Wednesday morning, and again, to the best of my knowledge, on Friday morning.

COMMONWEALTH OF MASSACHUSETTS
SUPERIOR COURT

NO. 80-1075

MIDDLESEX: SS

WILLIAM J. MARTIN

PLAINTIFF

VS.

DIGHT W. CRAIN, ET AL

DEFENDANTS

AFFIDAVIT OF WILLIAM J. MARTIN

I, William J. Martin, based on personal knowledge, depose and say the following:

• • •

16. On January 24, 1980, I was notified in writing that the reason I had been suspended for five (5) days by Dr. Keefe was due to my grading procedure, alleged inefficiency and incapacity as a teacher.

• • •

Signed under the pains and penalties of perjury this ..... day of March 1983.

/s/ William J. Martin

COMMONWEALTH OF MASSACHUSETTS
SUPERIOR COURT

NO.

MIDDLESEX, SS

WILLIAM J. MARTIN, PLAINTIFF

VS.

DIGHT W. CRAIN, PETER H. GARLAND,
J. VINCENT SAUNDERS,
MARSHALL LEBOWITZ, MARK H. RAIDER,
PAUL AMBLER AND PAMELA J. KAUFMANN
AS THEY ARE MEMBERS OF THE NATICK
SCHOOL COMMITTEE AND
JOSEPH A. KEEFE, SUPERINTENDENT OF
SCHOOLS OF THE TOWN OF NATICK

COMPLAINT

1.) The Plaintiff William J. Martin is a resident of Natick in the County of Middlesex, and is employed as a tenured school teacher in the Natick School system, having been employed in such position since 1959.

2.) The Defendants Dight W. Crain, Peter H. Garland, J. Vincent Saunders, Marshall Lebowitz, Mark H. Raider, Paul Ambler and Pamela J. Kaufmann are all residents of the Town of Natick, Middlesex County, Massachusetts, and constitute the duly elected School Committee of the Town of Natick and the Defendant Joseph A. Keefe, Superintendent of Schools in the Town of Natick.

3.) That on January 9, 1980 the Plaintiff requested grievance forms from the Natick Education Association, and notified the Association that he intended to file a grievance against John Crisafulli, who was the Principal at the

East School in Natick, where the Plaintiff was employed as a fourth grade teacher.

4.) That on January 15, 1980 the Plaintiff notified Jean Burke, President of the Natick Teachers Association that he wished the Natick Teachers Association to represent him in filing a grievance against Mr. Crisafulli, the Principal of the school.

5.) That on January 18, 1980 Joseph A. Keefe, the Natick Superintendent of Schools, advised the Plaintiff that the Plaintiff had been relieved of his duties as a school teacher in the Town of Natick, and further advised the Plaintiff that he *must* resign his position as a teacher in the Natick Public School system. No reason was given by Dr. Keefe for this administrative action, but, the Plaintiff was told by Dr. Keefe if he did not resign or take a leave of absence by January 21, 1980, he would be fired.

6.) That on January 21, 1980 Joseph A. Keefe, Superintendent of Schools in the Town of Natick, notified the Plaintiff that he had been suspended by the Superintendent of Schools under the provisions of General Laws Chapter 71, Section 42(d) for the week of January 21 thru January 25, 1980.

7.) That on January 21, 1980 the Plaintiff through his attorney, Paul J. Keough requested a hearing on the suspension imposed by the Superintendent for the period January 21 thru January 25, 1980.

8.) That *no hearing* on the suspension for the period January 21 thru January 25, 1980 has ever been granted by the Petitioner.

9.) That the Plaintiff through his attorney, Paul J. Keough, requested a hearing under the provisions of General Laws, Chapter 42(d) on the contemplated additional suspension by the School Committee.

10.) That on January 24, 1980 the Plaintiff was notified by Joseph A. Keefe, Superintendent of School and Secretary of the Natick School Committee, that the Natick School Committee of it meeting on January 29, 1980, intended to vote whether or not to suspend the Plaintiff for the (3) reasons contained in the notification which is attached to and made part of this Complaint.

11.) That on January 29, 1980 a suspension hearing was held before the Natick School Committee on the contemplated additional suspension. That said hearing was commenced at 8:00 P.M. on January 29, 1980, and adjourned on January 30, 1980 at 12:30 A.M.

12.) That the suspension hearing in front of the Natick School Committee was resumed on January 30, 1980 at 7:00 P.M., and that it was ended at 1:40 A.M. on January 31, 1980.

13.) That approximately 11:55 P.M. on January 30, 1980, attorney for the Plaintiff advised the Natick School Committee that because of fatique and ineffectiveness and the lateness of the hour, he would be unable to continue with the hearing beyond 1:00 A.M. on January 31, 1980.

14.) That on 1:00 A.M. on January 31, 1980 the attorney for the Plaintiff advised the Natick School Committee that he was not finished with the cross examination of the School Committee's witnesses, and that he wished to present witnesses on behalf of the Plaintiff, and requested a continuance of the hearing.

15.) The School Committee at approximately 1:00 A.M. on January 31, 1980 voted to continue the hearing in the *absence* of the Plaintiff and his counsel, who was unable to continue because of fatigue, and exhaustion.

16.) That at 1:00 A.M. on January 31, 1980 the Plaintiff and his counsel left the School Committee meeting.

17.) That thereafter the School Committee called witnesses in the absence of the Plaintiff, and continued the hearing, and at 1:40 A.M. on January 31, 1980 without the Plaintiff being present, or having the opportunity to call witnesses in his behalf, voted to suspend the Plaintiff for (30) days.

18.) That the School Committee has never given the Plaintiff a *hearing* on his suspension for the period January 21, 1980 to January 25, 1980.

19.) That the notification dated January 24, 1980 was insufficient notice to the Plaintiff for the hearing held January 29, 1980, and not in compliance with the provisions of General Laws, Chapter 71, Section 42(d).

20.) That the refusal of the School Committee to allow the Plaintiff to present witnesses in his behalf, was in violation of General Laws, Chapter 71, Section 42(d).

21.) That the vote of the School Committee in refusing to allow a continuance to the Plaintiff of the hearing after six late evening and early morning hours was arbitrary, unreasonable and in violation of due process of law.

22.) That the actions of the School Committee in the absence of the Plaintiff or the Plaintiff's attorney after his departure on January 31, 1980 at 1:00 A.M., was arbi-

trary, unreasonable and in violation of the Plaintiff's rights under General Laws, Chapter 71, Section 42(d).

23.) That an actual controversy has arisen between the Plaintiff and the Defendant as to whether the action of the Defendants in refusing the Plaintiff a hearing on his suspension of January 21, 1980 to January 25, 1980 was in violation of General Laws, Chapter 71, Section 42(d).

24.) That an actual controversy has arisen between the Plaintiff and the various Defendants as to whether the action of the Defendants in suspending the Plaintiff from his position as a school teacher in the Town of Natick for a thirty day period beginning January 31, 1980 thru February 29, 1980 was in violation of General Laws, Chapter 71, Section 42(d).

25.) That the suspension imposed by the Defendant School Committee was not justified.

WHEREFORE, the Plaintiff demands:

1.) That a Declaratory Judgment be made as to the rights of the various parties resolving the controversies set forth in paragraphs 23 and 24 of this Complaint.

2.) That a Judgment be granted that the suspension of January 20 thru January 25, 1980 was in violation of M.G.L. 71 42(d).

3.) That a Judgment be granted that the hearing held on January 30, 31, 1980 violated M.G.L. 71 42(d), the fourteenth Amendment of the United States Constitution and the Massachusetts Constitution, Part I, Articles 10 and 11.

4.) That the Defendants, their agents, servants and employees be directed to return Plaintiff to the position he held at the beginning of the 1979-1980 school year.

5.) That the defendants, their agents, servants or employees be directed to pay Plaintiff for the periods he was suspended.

6.) That the Plaintiff be awarded his costs and reasonable attorneys fees for bringing this action.

7.) And for such further relief this Court may deem just and equitable.

By His Attorney,
/s/ William C. Wright, Jr.
5 Main Street
Natick, MA 01760
Tel. (617) 653-8141
Date: February 29, 1980